

APPENDIX:

Relevant Sections from the Clean Air Act, Code of Federal Regulations, and Region 8 SIP Approvals

1.) Background Related to the General Conformity Exemption for Major and Minor Sources that Require NSR Permits:

CAA section 176(c) and 40 CFR 93 Subpart B (sections 93.150 to 93.165) address general conformity. EPA revised the General Conformity regulations on April 5, 2010 to specify that a conformity determination is not required for “the portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (Section 110(a)(2)(c) and Section 173 of the Act)”. See 40 CFR 93.153(d)(1).

Prior to the 2010 revision, the General Conformity regulations only allowed major sources that required permits to be excluded from a conformity determination. In the preamble for the April 5, 2010 rule, EPA stated in a response to a comment that:

“EPA agrees that requiring a conformity analysis for emission covered by a minor source NSR permit would be redundant and provide little environmental benefit. EPA believes that the permitting authority has the responsibility to ensure that the source will not interfere with the SIP or otherwise interfere with the State’s ability to attain the standards. Minor source NSR permits are issued under a SIP-approved program, so there has already been a determination that the permitting program will not contribute to a violation of the NAAQS or delay the attainment or maintenance of the standards. Thus, by issuing a specific permit under that program, the authority is stating that the emissions are accounted for in the SIP, effectively providing the same assurances as a conformity determination since Federal agencies can demonstrate conformity for an action by showing that the actions will not cause a violation or interfere with the SIP.” (See 75 FR 17262-63.)

2.) Wyoming Regulations: Wyoming currently has EPA SIP-approved permit regulations in its SIP for minor sources and for PSD major sources; reference Wyoming Air Quality Standards and Regulations (WAQSR): Chapter 6 Permitting Requirements Section 2 and Section 4 respectively.

Wyoming’s SIP approved permit regulations do not have specific provisions for non-attainment areas. However, the State does have a 2008 interim policy for the UGRB ozone non-attainment area that requires new emission sources to obtain offsets or otherwise demonstrate that the “... proposed facility will not prevent the attainment or maintenance of the ambient air quality standard.” (Reference: WAQSR Chapter 6, Sec 2(c)(ii).) WAQSR Chapter 6 contains the following Permitting Requirements:

Section 2. Permit requirements for construction, modification, and operation.

Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility.

(c) No approval to construct or modify shall be granted unless the applicant shows, to the satisfaction of the Administrator of the Division of Air Quality that:... (ii) The proposed facility will not prevent the attainment or maintenance of any ambient air quality standard.

Section 4. Prevention of significant deterioration.

Section 13. Nonattainment permit requirements. This section states that 40 CFR part 51.165 is herein incorporated by reference, in its entirety, with the exception of paragraph (a) and paragraph (a)(1).

We note that Chapter 6, Section 2 and Section 4 are EPA SIP-approved; however, Chapter 6, Section 13 is not Federally-approved into the Wyoming’s SIP.

Ex. 5 - Deliberative Process

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following:

For reference, 40 CFR 165 Appendix. S states the

“This appendix sets forth EPA’s Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution (not including indirect sources) under 40 CFR subpart I and section 129 of the Clean Air Act Amendments of 1977, Public Law 95– 95, (note under 42 U.S.C. 7502). A major new source or major modification which would locate in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region or which would locate in an area designated in 40 CFR part 81, subpart C, as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the stringent conditions set forth below are met.”

3.) Region 8 Federal Register actions for relevant sections of WAQSR Chapter 6:

a.) Chapter 6, Section 2: The entire section was restructured and this became State-effective on October 29, 1999. This restructuring revision correlates to EPA's final rulemaking action of July 28, 2004 (see 69 FR 44965, 7/28/2004) which involved a September 12, 2003 submittal by the State.

b.) Chapter 6, Section 4: As noted for Section 2 above, Section 4 was also restructured and this became State-effective on October 29, 1999. This restructuring of Section 4 was also approved by EPA in our July 28, 2004 action (see 69 FR 44965, 7/28/2004). The State shows that additional revisions were made to Chapter 6, Section 4 for "NSR Reform" that became State-effective on October 6, 2006. These revisions were included in a December 13, 2006 submittal by the State and addressed in EPA's rulemaking of July 16, 2008 (see 73 FR 40750, 7/16/2008). Lastly, the State made additional revisions to Chapter 6, Section 4 for "PM_{2.5} regulated NSR pollutant condensibles" that became State-effective on September 7, 2010. These revisions to Chapter 6, Section 4 were addressed in EPA's rulemaking of July 25, 2011 (see 76 FR 44265, 7/25/2011).

4.) Section 110(l) of the Clean Air Act (CAA):

The provisions of CAA Section 110(l) provide that EPA cannot approve a State Implementation Plan (SIP) revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. Therefore, the EPA will approve a SIP revision that removes or modifies control measure(s) in the SIP only after the State has demonstrated that such removal or modification will not interfere (“noninterference”) with attainment of the National Ambient air Quality Standards (NAAQS), Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

Specifically, section 110(l) states:

“Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.”